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Sperator

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JUDGE HART

UNITED STATES OF AMERICA,

Plaintiff,

v.

METAL MANAGEMENT MIDWEST, INC.,

Defendant.

010 4551

MAGISTRATE JUDGE ASHMAN

CIVIL ACTION NO.

RECEIVED

JUN 15 2001

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTCOMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against Metal Management Midwest, Inc. ("MMMI"), to obtain injunctive relief and civil penalties for past and ongoing violations of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401, et seq., specifically the chlorofluorocarbon regulations implementing the National Recycling and Emission Reduction Program, 40 C.F.R. Part 82. The United States further seeks injunctive relief and the assessment of civil penalties for past and ongoing violations by MMMI of the Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251, et seq., and the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA"), 42

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U.S.C. §§ 6901, et seq., and the applicable federal and state regulations implementing these statutes. The violations occurred -- and several are still occurring -- at three scrap processing facilities owned and operated by MMMI in Chicago, Cook County, Illinois.

JURISDICTION AND VENUE

2. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; CAA Section 113(b), 42 U.S.C. § 7413(b); CWA Sections 309(b) and 311(b)(7), 33 U.S.C. §§ 1319(b) and 1321(b)(7); and RCRA Section 3008(a), 42 U.S.C. § 6928(a).

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1395(a); CAA Section 113(b), 42 U.S.C. § 7413(b); CWA Sections 309(b) and 311(b)(7), 33 U.S.C. §§ 1319(b) and 1321(b)(7); and RCRA Section 3008(a)(1), 42 U.S.C. § 6928(a)(1); because MMMI does business in this District, the violations occurred in this District, and because this is an action for a fine or penalty and MMMI is found in this District.

NOTICE TO STATE

4. The United States has given notice of the commencement of this action to the State of Illinois as required by CAA Section 113(b), 42 U.S.C. § 7413(b); CWA Section 309(b), 33 U.S.C. § 1319(b); and RCRA Section 3008(a), 42 U.S.C. § 6928(a).

THE DEFENDANT

5. MMMI is a corporation incorporated under the laws of the State of Illinois, with its principal place of business in Chicago, Cook County, Illinois.

6. MMMI owns and operates scrap metal processing facilities in Chicago, including facilities located at 1509 West Cortland ("Cometco facility"), 2500 South Paulina Street ("Paulina facility"), and 9331 South Ewing Street ("Ewing facility"). The allegations set forth below apply to these three facilities only.

7. Prior to January 1, 2000, Cozzi Iron & Metal, Inc. ("Cozzi") owned and operated the Paulina facility. Cometco Corporation ("Cometco") and Scrap Processing, Inc. ("Scrap Processing"), both wholly-owned subsidiaries of Cozzi, owned and operated the Cometco and Ewing facilities, respectively. As of January 1, 2000, the separate subsidiaries were merged into the parent corporation, Cozzi Iron & Metal, Inc., and the parent corporation's name was changed to Metal Management Midwest, Inc. ("MMMI").

8. The Cometco facility operates as a scrap metal storage and sorting facility for MMMI's several shredding facilities. At the Cometco facility, MMMI receives different grades of machine shop cuttings, many of which are coated with used cutting oils. The cuttings are stored on the ground surface in the central portion of the facility prior to further processing or sale. The Cometco facility's property is sloped such that the used oil runoff from the cuttings piles is directed towards a settling pond. The settling pond serves as an oil/water separator and drains into the adjacent Chicago River through a six-inch diameter outfall pipe. On several occasions, hundreds of gallons of used oil have been removed from the pond by contractors and transported to the Paulina facility for reuse.

9. The Paulina facility is located on an approximately 28-acre parcel of property adjacent to the South Branch of the Chicago River. At the Paulina facility, MMMI purchases, processes and ships recyclable ferrous and non-ferrous materials. Scrap metal is cut, screened,

shredded, baled, sorted, and stored at this location. The Paulina facility includes Yard 1, Yard 2, Yard 10, and a truck maintenance yard. Processing, storage, and barge loading of ferrous materials occurs at Yard 1. A shredder and a baler are located in Yard 1, as are piles of shredded vehicles and machine shop turnings, and drums of hydraulic fluid. In Yard 2, MMMI processes steel with an hydraulic shear, and a baler is also located in this yard. In Yard 10, MMMI uses a Newell Shredder to shred vehicles, appliances and sheet metal. Piles of shredded ferrous material and shredded non-ferrous material are located in the yard, along with the raw materials for the shredder. MMMI stores drums of used oil in the truck maintenance yard.

10. The Ewing facility is located adjacent to the Calumet River. At the Ewing facility, MMMI receives materials, including vehicles and appliances, which are then cut, screened and shredded at this location. The shredded ferrous material is stored in piles. MMMI also stages drums of used oil at the Ewing facility for shipment to the Paulina facility.

11. MMMI is a "person" within the meaning of CAA Section 302(e), 42 U.S.C. § 7602(e); CWA Section 502(5), 33 U.S.C. § 1362(5); and RCRA Section 1004(15), 42 U.S.C. § 6903(15).

12. On November 20, 2000 MMMI filed a petition for reorganization under Chapter 11 of the United States Bankruptcy Code. In re: Metal Management Midwest., Inc., Case No. 00-4316 (Bankr. D. Del.). The United States filed a Proof of Claim in that matter on May 18, 2001. Collection of penalties for any claims predating the filing of MMMI's Chapter 11 petition shall be conducted pursuant to and in accordance with the bankruptcy proceedings.

VIOLATIONS OF THE CLEAN AIR ACT

Statutory, Regulatory, and Environmental Significance Background

13. The Clean Air Act ("CAA") establishes a regulatory scheme designed to protect and enhance the quality of the Nation's air resources, so as to promote the public health and welfare and the productive capacity of its population. See 42 U.S.C. § 7401(b)(1).

14. The stratospheric ozone layer is located approximately ten to fifty kilometers above the Earth's surface. The stratospheric ozone layer shields the Earth's surface from harmful amounts of ultraviolet ("UV-B") radiation. Chlorofluorocarbons ("CFCs") and hydrochlorofluorocarbons ("HCFCs") are substances that deplete the stratospheric ozone layer. To the extent that ozone-destroying chemicals such as CFCs and HCFCs occur in the atmosphere, penetration of UV-B radiation to the Earth's surface increases. Increased exposure to UV-B radiation affects human health and causes environmental harm. Human health effects from exposure to UV-B radiation include melanoma skin cancer, cataracts, and an increased susceptibility to disease, while environmental harms include damage to marine-organism ecosystems and damage to crops.

15. CAA Section 608, 42 U.S.C. § 7671g, sets forth the requirements of the National Recycling and Emission Reduction Program and requires U.S. EPA to promulgate regulations establishing standards and requirements for the safe disposal of Class I and Class II substances. Class I and Class II substances include certain CFCs and HCFCs with ozone-depletion potential. See 42 U.S.C. §§ 7671-7671a. Section 608 mandates the inclusion in the regulations of requirements that Class I and Class II refrigerants, including CFCs and HCFCs, be removed from any appliances, machines or other goods containing such refrigerants prior to such goods being

disposed of or delivered for recycling. See 42 U.S.C. § 7671g(b)(1). The implementing regulations for Section 608 are set forth at 40 C.F.R. Part 82.

16. Pursuant to 40 C.F.R. § 82.156(f), “persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, room air conditioning [unit], MVACs [motor vehicle air conditioning unit], or MVAC-like appliances must either: (1) Recover any remaining refrigerant from the appliance in accordance with [40 C.F.R. § 82.156(g) or (h)], as applicable; or (2) Verify that the refrigerant has been evacuated from the appliance or shipment of appliances previously.”

17. 40 C.F.R. § 82.156(f)(2) provides that such refrigerant evacuation verifications “must include a signed statement from the person from whom the appliance . . . is obtained that all refrigerant that had not leaked previously has been recovered from the appliance . . . in accordance with [40 C.F.R. § 82.156(g) or (h)], as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered or a contract that refrigerant will be recovered prior to delivery.”

18. 40 C.F.R. § 82.152 defines the term “disposal” as “the process leading to and including: . . . (2) The disassembly of any appliance for discharge, deposit, dumping, or placing of its discarded component parts into or on any land or water; or (3) The disassembly of any appliance for reuse of its component parts.”

19. At all times relevant to this complaint, MMMI has been a person who takes the final step in the disposal process, within the meaning of 40 C.F.R. § 82.156(f).

20. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), as amended by Pub. L. 104-134, any person who violates CAA Section 608, 42 U.S.C. § 7671g, and the regulations

promulgated pursuant thereto, shall be subject to a civil penalty not to exceed \$25,000 per day for each CAA violation occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997. See 40 C.F.R. § 19.4. CAA Section 113(b), 42 U.S.C. § 1319(b), further provides that the United States may seek injunctive relief for CAA violations.

Allegations Pertaining to Violations of the CFC Regulations

21. Upon information and belief, from 1997 to 2001, MMMI did not possess CFC refrigerant evacuation and recovery equipment. Upon information and belief, MMMI's sole means of complying with federal CFC regulations during this period was through receipt of CFC refrigerant evacuation verifications from third parties.

22. Since at least 1997, MMMI has purchased several hundred vehicles per week from the City of Chicago. Contract towing companies pick up these vehicles from the City of Chicago's auto pounds and transport them by truck to the Paulina facility where they are eventually shredded into scrap in Yard 10. The shredding process releases to the atmosphere any CFC refrigerant present in the vehicles' MVACs at that time.

23. Prior to January 1, 2001, MMMI did not require the evacuation of all CFC refrigerant from MVACs in vehicles purchased from the City of Chicago's auto pounds prior to delivery to the Paulina facility. Upon information and belief, MMMI, does not possess CFC refrigerant evacuation verifications for more than 10,500 vehicles (over 20,000 tons of vehicles) that have been shredded at the Paulina facility since 1997.

24. At the Cometco facility, MMMI purchases and processes appliances, including air conditioners and refrigerators. These appliances often incorporate compressors which contain

CFC refrigerant. After processing, the appliances are transported to another MMMI facility where they are shredded. The shredding process releases to the atmosphere any CFC refrigerant present in the appliances at that time.

25. Upon information and belief, MMMI maintains contracts with certain of its suppliers, pursuant to which such suppliers verify that they have personally recovered the appliances' refrigerant or all such refrigerant has previously escaped due to the condition of the appliance. MMMI states that it requires suppliers with whom it does not maintain such contracts to sign verification statements at the time of sale regarding the prior recovery of CFC refrigerant.

26. On May 25, 1999, U.S. EPA inspectors examined the CFC refrigerant evacuation verification statements MMMI/Cometco had retained for the period May 1, 1999 through May 25, 1999. Of the approximately 30 verification statements examined by U.S. EPA, seven were incomplete, in that they were not signed and did not identify whether the supplier had personally recovered the appliances' refrigerant or whether all such refrigerant had previously escaped due to the condition of the appliance.

VIOLATIONS OF THE CLEAN WATER ACT

Statutory and Regulatory Background

27. The objective of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of the waters of the United States. See 33 U.S.C. § 1251(a).

CWA Section 301

28. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person except in compliance with

CWA Sections 301, 302, 306, 307, 318, 402, and 404, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1342, and 1344.

29. CWA Section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

30. CWA Section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" as including, among other things, "wrecked or discarded equipment . . . and industrial, municipal, and agricultural waste discharged into water"

31. CWA Section 502(14), 33 U.S.C. § 1362(14), defines "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, . . . or vessel or other floating craft, from which pollutants are or may be discharged."

32. CWA Section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "waters of the United States, including the territorial seas."

33. CWA Section 309(a)(3), 33 U.S.C. § 1319(a)(3), authorizes the U.S. EPA Administrator to issue an administrative order or commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation of CWA Section 301, 33 U.S.C. § 1311.

34. Pursuant to CWA Section 309(d), 33 U.S.C. § 1319(d), as amended by Pub. L. 104-134, any person who violates CWA Section 301, 33 U.S.C. § 1311, or who violates any condition or limitation in an National Pollution Discharge Elimination System ("NPDES") permit implementing any of such sections in a permit that is issued by U.S. EPA or by a state under Section 402 of the Act, 33 U.S.C. § 1342, shall be liable for a civil penalty not to exceed

\$25,000 per day for each CWA violation occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997. See 40 C.F.R. § 19.4. CWA Section 309, 33 U.S.C. § 1319(b), further provides that the United States may seek injunctive relief for CWA violations.

CWA Section 402

35. CWA Section 402, 33 U.S.C. § 1342, authorizes the U.S. EPA Administrator, or a state authorized to carry out the NPDES program, to issue NPDES permits for the discharge of pollutants upon condition that such discharge will meet certain specific requirements of the CWA and such other conditions as the U.S. EPA Administrator determines are necessary to carry out the provisions of the CWA.

36. The State of Illinois is, and at all times relevant to this complaint has been, authorized by the U.S. EPA Administrator pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer an NPDES permit program for discharges into navigable waters within its jurisdiction.

37. CWA Section 402(p), 33 U.S.C. § 1342(p), requires U.S. EPA to establish NPDES permit application requirements for storm water discharges associated with industrial activity. These regulations are primarily set forth at 40 C.F.R. § 122.26. The MMMI facilities are “facilities involved in the recycling of materials.” Such facilities are considered to be engaged in “industrial activity” and are regulated under the storm water regulations. See 40 C.F.R. § 122.26(b)(14)(vi).

38. CWA Section 402(p)(4)(A), 33 U.S.C. § 1342(p)(4)(A), requires dischargers of storm water associated with industrial activity to apply for a NPDES storm water discharge permit.

39. "Storm water" is defined as "storm water runoff, snow melt runoff, and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

40. 40 C.F.R. § 122.26(b)(14) provides that the term "storm water discharge associated with industrial activity" means "the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage area at an industrial plant" The term includes but is not limited to, "storm water discharges from industrial plant yards; . . . material handling sites; . . . refuse sites; . . . sites used for residual treatment, storage or disposal; . . . and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water."

41. At all times relevant to this complaint, MMMI was a discharger of storm water associated with industrial activity within the meaning of 40 C.F.R. § 122.26(c) and 33 U.S.C. § 1342(p).

Oil Pollution Act

42. In 1990, CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), was amended by the Oil Pollution Act ("OPA"). Section 311(b)(3) prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into and upon the waters of the contiguous zone.

43. The Spill Prevention Control and Countermeasure ("SPCC") regulations, 40 C.F.R. Part 112, were promulgated pursuant to CWA Section 311(j), 33 U.S.C. § 1321(j).

Pursuant to 40 C.F.R. 112.1(b), SPCC regulations apply to “owners or operators of non-transportation-related onshore and offshore facilities engaged in . . . storing, processing, refining, transferring, distributing or consuming oil and oil products, and which due to their location, could reasonably be expected to discharge oil in harmful quantities . . . into or upon the navigable waters of the United States.”

44. The SPCC regulations do not apply to facilities which meet both of the following storage limitations: “(i) The underground buried storage capacity of the facility is 42,000 gallons or less of oil, and (ii) The storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided no single container has a capacity in excess of 660 gallons.” 40 C.F.R. § 112.1(d)(2).

45. Pursuant to 40 C.F.R. § 112.3(a), owners of facilities subject to the SPCC regulations must prepare a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”), “in writing and in accordance with §112.7.” For facilities in operation on or before the effective date of 40 C.F.R. Part 112, the SPCC Plan “shall be prepared within six months after the effective date . . . and shall be fully implemented as soon as possible, but not later than one year after the effective date of [Part 112].” 40 C.F.R. §112.3(a). The SPCC regulations took effect on August 30, 1994.

46. Pursuant to CWA Section 311(b)(7), 33 U.S.C. § 1321(b)(7), as amended by Pub. L. 104-134, any person who fails or refuses to comply with any regulation issued under CWA Section 311(j), 33 U.S.C. § 1321(j), shall be liable for a civil penalty not to exceed \$25,000 per day for each violation of the CWA occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (see 40 C.F.R. § 19.4).

Allegations Pertaining to Violations of the Clean Water Act

Violations of CWA Section 301

47. On May 27, 1999, U.S. EPA inspectors observed effluent discharging from the Cometco facility's outfall pipe to the Chicago River. U.S. EPA sampled the discharge and the results indicated the presence of oil and grease in excess of 150 parts per million ("ppm").

MMMI does not possess an NPDES permit for this discharge of pollutants.

48. On at least three occasions – February 26, 1998, April 6, 1999, and May 27, 1999 – U.S. EPA inspectors observed MMMI discharging scrap metal into the Chicago River adjacent to the Cometco facility when a crane unloading metal from a barge next to the facility dropped such scrap into the river. Upon information and belief, the scrap metal now lies in the sediment near the Cometco facility. MMMI does not possess a permit authorizing the disposal of scrap metal into the Chicago River.

Violations of Storm Water Permit Reporting Provisions

49. MMMI's Cometco facility, Paulina facility, and Ewing facility are each located adjacent to navigable bodies of water of the United States. These facilities are subject to standardized storm water permits issued by Illinois EPA (Illinois permit numbers ILR0002812, ILR0002813, and ILR0002844, respectively), based upon an application filed with Illinois EPA by the Institute of Scrap Recycling Industries (an industry group) on behalf of its member companies.

50. The storm water permits require MMMI to, among other things: (1) prepare a Storm Water Pollution Prevention Plan ("SWPPP") for each facility; (2) inspect the facilities annually for compliance with the SWPPP; and (3) submit annual inspection reports to the State.

51. For the years 1995 through 1999, MMMI failed to submit the required annual inspection reports to the State of Illinois for all three facilities covered by the storm water discharge permits (Cometco, Paulina, Ewing).

Violations of SPCC Regulations

52. The Ewing facility is located adjacent to the Calumet River, a navigable body of water.

53. Oil and oil products are stored at the Ewing facility. As of March 31, 1999, the Ewing facility possessed an above-ground oil storage capacity of approximately 54,000 gallons.

54. The Paulina facility is located adjacent to the South Branch of the Chicago River, a navigable body of water.

55. Oil and oil products are stored at the Paulina facility. As of March 30, 1999, the Paulina facility possessed an above-ground oil storage capacity of approximately 6,750 gallons.

56. Upon information and belief, both the Ewing facility and the Paulina facility were in operation prior to August 30, 1994, when the SPCC regulations took effect.

57. On March 30, 1999 and March 31, 1999, U.S. EPA inspectors visited the Ewing and Paulina facilities, respectively. During these inspections, MMMI informed the U.S. EPA inspectors that SPCC Plans had neither been prepared nor implemented at either facility.

VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT

Statutory and Regulatory Background

58. Subchapter III of RCRA establishes a comprehensive statutory scheme for the management of hazardous wastes and recycled oil from their initial generation until their final disposal. Regulations promulgated pursuant to RCRA govern generators and transporters of hazardous wastes as well as the owners and operators of hazardous waste treatment, storage, and disposal facilities. The federal regulations implementing Subchapter III of RCRA are codified at 40 C.F.R. Part 260, et seq. Regulations promulgated pursuant to RCRA also govern used oil generators, transporters, processors and re-refiners, burners, and marketers. The regulations implementing the used oil provisions of Subchapter III of RCRA are codified at 40 C.F.R. Part 279.

59. Under RCRA Section 3006(b), 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, any state may apply for and receive authorization to enforce its own hazardous waste management program in place of the federal hazardous waste management program, provided the state requirements are consistent with and at least equivalent to the federal requirements. To the extent that a state's hazardous waste program is authorized by U.S. EPA pursuant to RCRA Section 3006, 42 U.S.C. § 6926, the requirements of the state program operate "in lieu of" the federal hazardous waste management program set forth in 40 C.F.R. Part 260 et seq. (42 U.S.C. § 6926(b)). Pursuant to Section 3006(h) of RCRA, 42 U.S.C. § 6926(h), a state may also be authorized to operate a used oil management program.

60. Illinois has promulgated hazardous waste management regulations in Title 35 of the Illinois Administrative Code, Part 724, and received authorization from U.S. EPA on

January 31, 1986, to administer various aspects of the hazardous waste management program within Illinois. See 51 Fed. Reg. 3778 (Jan. 31, 1986). Pursuant to RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), the United States is authorized, upon notification to the State of Illinois, to enforce the regulations which comprise the federally-approved Illinois hazardous waste management program.

61. Illinois has promulgated standards for the management of used oil in Title 35 of the Illinois Administrative Code, under Part 739 of Subchapter C, Chapter I, Subtitle G. Illinois received final authorization from U.S. EPA effective October 4, 1996 (see 61 Fed. Reg. 40520 (Aug. 5, 1996)) to administer its used oil management program within Illinois.

62. Illinois Administrative Code Section 739.100, 35 Ill. Adm. Code § 739.100, defines the term "used oil" as "any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities."

63. Pursuant to Illinois Administrative Code Section 739.110(a), 35 Ill. Adm. Code § 739.110(a), used oil is subject to regulation under 35 Ill. Adm. Code Part 739, regardless of whether it exhibits any characteristics of hazardous waste.

64. Under Illinois Administrative Code Section 739.110(b), 35 Ill. Adm. Code § 739.110(b), used oil containing more than 1,000 ppm total halogens is presumed to be hazardous waste and is regulated as such.

65. Pursuant to Illinois Administrative Code Section 739.111, 35 Ill. Adm. Code § 739.111, used oil burned for energy recovery ("used oil fuel") is subject to regulation under 35

Ill. Adm. Code Part 739, unless it meets the constituent specifications set forth in 35 Ill. Adm. Code § 739.111, Table 1.

66. Illinois Administrative Code Section 739.112(a), 35 Ill. Adm. Code §739.112(a), provides: "Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under 35 Ill. Adm. Code 724 or 725 [Illinois' regulations governing hazardous waste management units]."

67. Illinois Administrative Code Section 720.110, 35 Ill. Adm. Code § 720.110, defines the term "surface impoundment" as "a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons."

Subpart C: Standards for Used Oil Generators

68. Illinois Administrative Code Section 739.100, 35 Ill. Adm. Code § 739.100, defines a "used oil generator" as "any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation."

69. Pursuant to Illinois Administrative Code Section 739.120, 35 Ill. Adm. Code § 739.120, all generators of used oil are subject to the regulations set forth in Subpart C: Standards for Used Oil Generators (35 Ill. Adm. Code §§ 739.120 - 739.124) unless they fall within the exceptions identified in 35 Ill. Adm. Code § 739.120(a) (*i.e.* used oil generated by household "do-it-yourselfers," vessels, or farmers; or any generator mixing used oil with diesel fuel).

70. Pursuant to Illinois Administrative Code Section 739.122, 35 Ill. Adm. Code § 739.122, used oil generators must comply with certain regulations pertaining to the storage of used oil. Under 35 Ill. Adm. Code § 739.122(c)(1), “[c]ontainers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words ‘Used Oil.’” Pursuant to 35 Ill. Adm. Code § 739.122(d), “[u]pon detection of a release of used oil to the environment . . . a generator shall perform the following cleanup steps: (1) Stop the release; (2) Contain the released used oil; (3) Properly clean up and manage the released used oil and other materials; and (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.”

Subpart F: Standards for Used Oil Processors

71. Illinois Administrative Code Section 739.100, 35 Ill. Adm. Code § 739.100, defines a “used oil processor” as “a facility that processes used oil.” This section further defines “processing” as “chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils Processing includes, but is not limited to . . . filtration, simple distillation, chemical or physical separation, and re-refining.”

72. Pursuant to Illinois Administrative Code Section 739.150(a), 35 Ill. Adm. Code § 739.150(a), the regulations set forth in Subpart F: Standards for Used Oil Processors (35 Ill. Adm. Code §§ 739.150 - 739.159) apply to “owners and operators of facilities that process used oil.” Under this Section, the term “processing” is defined as “chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, . . . [and] includes . . . chemical or physical separation.”

73. Pursuant to Illinois Administrative Code Section 739.151, 35 Ill. Adm. Code § 739.151, “[a] used oil processor . . . who has not previously complied with the notification requirements of RCRA Section 3010 shall comply with those requirements and also obtain a U.S. EPA identification number pursuant to RCRA Section 3010 and an Illinois special waste identification number.”

74. Pursuant to Illinois Administrative Code Section 720.155, 35 Ill. Adm. Code § 720.155, “[o]wners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of Section 739.153 and, if applicable, Section 739.172.”

75. Illinois Administrative Code Section 739.153, 35 Ill. Adm. Code § 739.153, provides that “the owner or operator of a used oil processing facility shall determine whether the total halogen content of used oil managed at a facility is above or below 1,000 ppm,” to ensure that used oil is not a hazardous waste under 35 Ill. Adm. Code § 739.110(b)(1)(B)’s rebuttable presumption.

76. Under Illinois Administrative Code Section 720.172, 35 Ill. Adm. Code § 739.172, used oil generators, transporters processors, or burners “may determine that used oil that is to be burned for energy recovery meets the fuel specifications of Section 739.111 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.”

77. Illinois Administrative Code Section 739.154(a), 35 Ill. Adm. Code § 739.154, states that: “Used oil processors shall not store used oil in units other than tanks, containers, or

units subject to regulation under 35 Ill. Adm. Code 724 or 725 [Illinois hazardous waste regulations].”

78. Illinois Administrative Code Section 739.159, 35 Ill. Adm. Code § 739.159, provides that “[o]wners and operators who generate residues from the storage, processing, or re-refining of used oil must manage the residues as specified in Section 739.110(e).” Pursuant to Section 739.110(e)(3), “materials derived from used oil that are disposed of or used in a manner constituting disposal are . . . solid wastes and thus are subject to the [Illinois] hazardous waste regulations . . . if the materials are listed or identified as hazardous waste.”

Subpart G: Standards for Used Oil Burners that Burn Off-Specification Used Oil for Energy Recovery

79. Illinois Administrative Code Section 739.160, 35 Ill. Adm. Code § 739.160, provides, *inter alia*, that Subpart G: Standards for Used Oil Burners that Burn Off-Specification Used Oil for Energy Recovery (35 Ill. Adm. Code §§ 739.160-167) applies to facilities “where used oil not meeting the specification requirements in Section 739.111 is burned for energy recovery in devices identified in 739.161(a).” The Section further provides that such facilities are not subject to the Subpart G regulations where “[t]he used oil is burned by the generator in an on-site space heater under the provisions of Section 739.123”. 35 Ill. Adm. Code § 739.160(a)(1).

80. Illinois Administrative Code Section 739.161, 35 Ill. Adm. Code § 739.161, provides that “[o]ff-specification used oil fuel may be burned for energy recovery in only: . . . (1) Industrial furnaces . . . ; (2) Boilers, as defined in 35 Ill. Adm. Code 720.110, that are

identified as follows: . . . (C) Used oil-fired space heaters provided that the burner meets the provisions of Section 739.123 . . . ; or (3) Hazardous waste incinerators”

81. The provisions of Illinois Administrative Code Section 739.123, 35 Ill. Adm. Code 739.123, are limited to “on-site burning in space heaters,” and state, *inter alia*,: “Generators may burn used oil in used oil-fired space heaters provided that: (a) The heater burns only used oil that the owner and operator generates”

Subpart H: Standards for Used Oil Fuel Marketers

82. Illinois Administrative Code Section 739.170, 35 Ill. Adm. Code § 739.170, provides, *inter alia*, that Subpart H: Standards for Used Oil Fuel Marketers (35 Ill. Adm. Code §§ 739.170-175) applies to any person who “directs a shipment of off-specification used oil from their facility to a used oil burner.”

83. The term “off-specification used oil” refers to used oil which exceeds any of the allowable levels of constituents and properties in the specifications set forth at 35 Ill. Adm. Code § 739.111, Table 1.

84. Illinois Administrative Code Section 739.171, 35 Ill. Adm. Code § 739.171, states that a “used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner that: (a) Has a U.S. EPA identification number and Illinois special waste identification number; and (b) Burns the used oil in an industrial furnace or boiler identified in § 739.161(a).”

85. Pursuant to 35 Ill. Adm. Code § 739.175, prior to directing its first shipment of off-specification used oil fuel to a burner, a used oil fuel marketer is required to obtain a “one-time written and signed notice from the burner certifying that: (1) The burner has notified EPA stating the location and general description of used oil management activities; and (2) The burner

will burn the off-specification used oil only in an industrial furnace or boiler identified in Section 739.161(a).” Section 739.175 further provides that such certification be “maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.”

Hazardous Waste Regulations: Used Oil as a Hazardous Waste

86. Pursuant to Illinois Administrative Code Section 739.110(b), 35 Ill. Adm. Code § 739.110(b)(1)(A), a “mixture of used oil and hazardous waste that is listed in 35 Ill. Adm. Code 721.Subpart D is subject to regulation as hazardous waste under 35 Ill. Adm. Code 703, 720 through 726, and 728, rather than as used oil under [35 Ill. Adm. Code Part 739].” Section 739.110(b)(1)(B) sets forth the rebuttable presumption that used oil “containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 35 Ill. Adm. Code 721.Subpart D.”

87. Pursuant to Illinois Administrative Code Section 722.134(d), 35 Ill. Adm. Code § 722.134(d), a “generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status” provided that such generators comply with, among other things, the “requirements of subsections (a)(2) and (a)(3) of [35 Ill. Adm. Code § 722.134]”.

88. Illinois Administrative Code Section 722.134(a)(2), 35 Ill. Adm. Code § 722.134(d), requires that when hazardous waste is placed in a Section 722.134(a)(1) compliant container, the “date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.”

89. Illinois Administrative Code Section 722.134(a)(3), 35 Ill. Adm. Code § 722.134(d), requires that when hazardous waste is placed in a Section 722.134(a)(1) compliant container, "each container and tank is labeled or marked clearly with the words 'Hazardous Waste'."

90. Pursuant to Illinois Administrative Code Section, 721.105(g)(3), 35 Ill. Adm. Code § 721.105(g)(3), a "conditionally exempt small quantity generator may either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility" so long as such facility meets one of the five conditions set forth in this Section.

91. RCRA Section 3008(g), 42 U.S.C. § 6928(g), provides that any person who violates any requirement of Subchapter III of RCRA shall be liable for a civil penalty not to exceed \$25,000 per day for each violation of RCRA occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (see 40 C.F.R. § 19.4). Section 3008(a), of RCRA, 42 U.S.C. § 6928(a), further provides that the United States may seek injunctive relief for violations of the RCRA.

Allegations Pertaining to Violations of RCRA Used Oil Provisions

Violations at the Cometco Facility

92. The Cometco facility operates as a scrap metal storage and separating facility for MMMI's several shredding facilities. At the Cometco facility, MMMI receives -- and stores in large piles on the ground -- scrap metal and different grades of machine shop turnings, many of which are coated with cutting oils. When the scrap metals arrive at the Cometco facility, the oils

on the metals constitute "used oils," in that they have been contaminated through use.

Metalworking oils are water soluble and drain from the scrap metal and flow overland without the addition of rainfall or other water, although rainwater increases the volume and flow of such metalworking oils. This drainage from the scrap piles at the Cometco facility is directed into a 25-foot diameter "settling pond."

93. On November 10, 1998, U.S. EPA inspectors observed drainage from the scrap piles along the southeastern edge of the facility boundary. The inspectors noted that: (i) the drainage had a visible sheen; (ii) the pond contained a brown, oily layer across part of the surface; and (iii) the vegetation surrounding the pond displayed dark staining.

94. Upon information and belief, the Cometco facility's settling pond was designed to use the natural properties of oil and water to separate used oil from water. As used oil and storm water accumulate in the Cometco facility's settling pond, the used oil separates from the water, with the used oil floating to the surface of the pond.

95. Oil-stained soils surround the perimeter of the settling pond. These soils are residues from the processing of used oil in the pond. Upon information and belief, neither MMMI nor its predecessor, Cometco, has done anything to manage or dispose of the oil-stained soils.

96. Prior to at least January 1, 1999, MMMI/Cometco had failed to develop and follow a written analysis plan regarding its used oil and failed to determine whether it constituted a hazardous waste.

97. The Cometco facility's settling pond is neither a hazardous waste permitted unit, nor one for which interim status is maintained.

98. On a number of occasions best known to the Defendant, but including at least three occasions through late 1998, MMMI/Cometco utilized a contractor to skim used oil from the settling pond. Upon information and belief, MMMI/Cometco sent the used oil to MMMI's Paulina facility where additional oil and water separation took place prior to the used oil fuel being burned in space heaters for energy recovery.

99. Prior to at least January 1, 1999, MMMI/Cometco had not obtained a U.S. EPA identification number pursuant to RCRA Section 3010, 42 U.S.C. § 6930, nor an Illinois special waste identification number.

100. Upon information and belief, prior to its first shipment of used oil to the Paulina facility, MMMI/Cometco failed to obtain from MMMI/Cozzi a notice certifying that MMMI/Cozzi: (a) had notified the U.S. EPA as to its location and provided a general description of its used oil management activities; and (b) would burn off-specification used oil only in an industrial furnace or boiler identified in 35 Ill. Adm. Code § 739.161(a).

101. MMMI also generates used oil through operation and servicing of heavy machinery at the Cometco facility. These used oils are stored in 55-gallon drums prior to shipment to Paulina, where they are burned for energy recovery. On April 3, 2001, U.S. EPA inspectors identified fifteen drums of used oil being stored at the Cometco facility. Six of the fifteen drums were not labeled with the words "Used Oil."

Violations of RCRA Used Oil Provisions at the Paulina Facility

102. Metal scrap is shredded at the Paulina facility. Since at least 1998, MMMI and its predecessor, Cozzi, have generated used oil in the cleaning and maintenance of equipment at the

Paulina facility. Some of this used oil is burned on-site in space heaters. MMMI/Cozzi also burn in space heaters at the Paulina facility used oil fuel processed at the Cometco facility.

103. On or about August 4, 1998, U.S. EPA inspectors identified at least 26 drums of used oil being stored at the Paulina facility. None of the 26 drums were labeled with the words "Used Oil."

104. During the same August 4, 1998 inspection, a U.S. EPA inspector visually identified several areas of used oil releases at the Paulina facility, specifically in the immediate vicinity of the above-ground storage tanks located in Yard 1 and Yard 10. At that time, the U.S. EPA inspector informed MMMI/Cozzi personnel of the used oil releases. On October 5, 1998, the U.S. EPA inspector again inspected the Paulina facility and noted that these used-oil releases had not been cleaned up.

105. On or about October 26, 1998, U.S. EPA representatives inspected the Paulina facility and documented the presence and operation of used-oil-fired space heaters. Upon information and belief, a portion of the used oil burned in the space heaters had been transported to the Paulina facility from the Cometco and/or Ewing facilities; *i.e.* the Paulina facility was burning used oil not generated on-site.

106. MMMI/Cozzi has not demonstrated that the used oil supplied from the Cometco or Ewing facilities meets the specifications set forth in 35 Ill. Adm. Code § 739.111.

Violations of RCRA Used Oil Provisions at the Ewing Facility

107. Metal scrap is shredded at the Ewing facility. Since at least 1998, MMMI and its predecessor, Scrap Processing, have generated used oil in the cleaning and maintenance of equipment at the Ewing facility.

108. On August 4, 1998, U.S. EPA inspectors identified thirteen drums of used oil being stored at the Ewing facility. None of the thirteen drums were labeled with the words "Used Oil."

Violations of Hazardous Waste Regulations

109. On June 2, 1989, MMMI's predecessor, Cozzi, notified U.S. EPA of its status as a conditionally exempt small quantity generator of between 100 kilograms and 1,000 kilograms of hazardous waste per month.

110. On August 17, 1998, U.S. EPA inspectors sampled the contents of a "used oil tank" at the Paulina facility. U.S. EPA had the sampled material analyzed and determined the presence of 54,000 ppm tetrachloroethene (>1,000 ppm total halogens) and 63 ppm benzene. MMMI/Cozzi's "used oil tank" at the Paulina facility contained hazardous waste and served as a hazardous waste tank. The tank was not labeled with the words "hazardous waste," nor was there an accumulation date recorded for the material in the tank.

111. Upon information and belief, on a date in October 1998 known only to Defendant, MMMI/Cozzi disposed of the tank and its contents. Upon information and belief, MMMI/Cozzi did not comply with hazardous waste disposal requirements in disposing of this tank.

FIRST CLAIM FOR RELIEF

Violations of the CFC Regulations at the Paulina Facility

112. The United States hereby realleges the allegations set forth above in paragraphs 1 through 26 as if fully set forth herein.

113. Since at least 1997, MMMI (formerly Cozzi) has shredded several hundred vehicles per week at the Paulina facility, including the motor-vehicle air conditioning units

("MVACs") incorporated into such vehicles. MVACs contain CFCs, which are Class I refrigerants.

114. MMMI/Cozzi is a person who takes the final step in the disposal process of MVACs. See 40 C.F.R. § 82.156(f).

115. To confirm that CFC refrigerant is not released during the shredding process, pursuant to 40 C.F.R. § 82.156(f), such persons must either: (1) recover any remaining refrigerant from the MVAC in accordance with specific procedures described in 40 C.F.R. § 82.156; or (2) verify that the refrigerant has been previously evacuated from the appliance in the manner set forth in 40 C.F.R. § 82.156(f)(2).

116. Upon information and belief, from 1997 to 2001, MMMI did not possess CFC refrigerant evacuation and recovery equipment and CFC refrigerant was not recovered from MVACs at the Paulina facility.

117. Upon information and belief, MMMI, did not obtain and does not possess 40 C.F.R. § 82.156(f)(2)-compliant CFC refrigerant evacuation certifications for approximately 10,500 vehicles (over 20,000 tons of vehicles) shredded at the Paulina facility.

118. Each MVAC disposed of by MMMI/Cozzi without having been previously evacuated of refrigerant by MMMI/Cozzi and for which MMMI lacks a refrigerant evacuation verification form constitutes a violation of 40 C.F.R. § 82.156(f).

119. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), MMMI is liable for a civil penalty not to exceed \$25,000 per day for each CAA violation occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

120. Unless required by an Order of the Court, MMMI will continue to violate 40 C.F.R. § 80.156(f)(2) and the CAA. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), the United States is entitled to injunctive relief against MMMI for its continuing violations of the CAA.

SECOND CLAIM FOR RELIEF
Violations of the CFC Regulations at the Cometco Facility

121. The United States hereby realleges the allegations set forth above in paragraphs 1 through 26 and 111 through 120 as if fully set forth herein.

122. Since at least 1997, MMMI (formerly Cometco) has purchased and processed appliances, including air conditioners and refrigerators. These appliances often incorporate compressors which contain CFCs, which are Class I refrigerants. After processing, the appliances are transported to another MMMI facility where they are shredded.

123. MMMI is a person who takes the final step in the disposal process of appliances. See 40 C.F.R. § 82.156(f).

124. To confirm that CFC refrigerant is not released during the shredding process, pursuant to 40 C.F.R. § 82.156(f), such persons must either: (1) recover any remaining refrigerant from the appliance in accordance with specific procedures described in 40 C.F.R. § 82.156; or (2) verify that the refrigerant has been previously evacuated from the appliance in the manner set forth in 40 C.F.R. § 82.156(f)(2).

125. Upon information and belief, from 1997 to 2001, MMMI did not possess CFC refrigerant evacuation and recovery equipment and CFC refrigerant was not recovered from appliances at the Cometco facility.

126. Upon information and belief, MMMI, did not obtain and does not possess 40 C.F.R. § 82.156(f)(2)-compliant CFC refrigerant evacuation certifications for at least seven appliances received at the Cometco facility and shredded by MMMI in May 1999.

127. Each appliance disposed of by MMMI without having been previously evacuated of refrigerant by MMMI and for which MMMI lacks a refrigerant evacuation verification form constitutes a violation of 40 C.F.R. § 82.156(f).

128. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), MMMI is liable for a civil penalty not to exceed \$25,000 per day for each CAA violation occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

129. Unless required by an Order of the Court, MMMI will continue to violate 40 C.F.R. § 80.156(f)(2) and the CAA. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), the United States is entitled to injunctive relief against MMMI for its continuing violations of the CAA.

THIRD CLAIM FOR RELIEF

Unpermitted Discharge of Pollutants Into Waters of the United States

130. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11 and 27 through 57 as if fully set forth herein.

131. On May 27, 1999, U.S. EPA inspectors observed the Cometco facility surface impoundment outfall pipe discharging effluent into the Chicago River. U.S. EPA sampled and analyzed the effluent and determined that it contained oil and grease in excess of 150 parts per million.

132. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant except in compliance with a permit issued under the CWA.

133. The oil and grease that MMMI caused to be discharged from the surface impoundment outfall pipe is a "pollutant" as defined in CWA Section 502(6), 33 U.S.C. §1362(6).

134. The surface impoundment outfall pipe that MMMI used to discharge oil and grease is a "point source" within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14).

135. At all times relevant to this claim, MMMI did not apply for or possess a permit authorizing the discharge of oil and grease from the surface impoundment outfall pipe.

136. The Chicago River is hydrologically connected to Lake Michigan, an interstate lake, and therefore constitutes "waters of the United States" within the meaning of the CWA and regulations promulgated thereunder.

137. Pursuant to CWA Section 301, 33 U.S.C. § 1311, the unpermitted discharge from the surface impoundment outfall pipe to the Chicago River, as described above, is unlawful.

138. Each day that Defendant, without authorization, discharged pollutants to the Chicago River constitutes a separate violation of CWA Section 301, 33 U.S.C. § 1311.

139. Pursuant to CWA Section 309(d) 33 U.S.C. § 1319(d), MMMI is liable for a civil penalty not to exceed \$25,000 per day for each violation of the CWA occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

140. Unless required by an Order of the Court, MMMI will continue to violate 33 U.S.C. § 1311(a). Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), the United States is entitled to injunctive relief against MMMI for its continuing violations of the CWA.

FOURTH CLAIM FOR RELIEF
Unpermitted Discharge of Pollutants Into Waters of the United States

141. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 27 through 57, and 130 through 140 as if fully set forth herein.

142. On at least three occasions – February 26, 1998, April 6, 1999 and May 27, 1999 – U.S. EPA inspectors observed MMMI discharging scrap metal into the Chicago River adjacent to the Cometco facility when a crane unloading metal from a barge next to the facility dropped such scrap into the river.

143. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant except in compliance with a permit issued under the CWA.

144. The scrap metal that MMMI caused to be discharged from the barge crane is a “pollutant” as defined in CWA Section 502(6), 33 U.S.C. § 1362(6).

145. The barge crane that MMMI used to discharge scrap metal was a “point source” within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14).

146. At all times relevant to this claim, MMMI did not apply for or possess a permit authorizing the discharge of scrap metal from the barge cranes.

147. The Chicago River is hydrologically connected to Lake Michigan, an interstate lake, and therefore constitutes “waters of the United States” within the meaning of the CWA and regulations promulgated thereunder.

148. Pursuant to CWA Section 301, 33 U.S.C. § 1311, the unpermitted discharges from the barge cranes to the Chicago River, as described above, are unlawful.

149. Each day that Defendant, without authorization, discharged pollutants to the Chicago River constitutes a separate violation of CWA Section 301, 33 U.S.C. § 1311.

150. Pursuant to CWA Section 309(d) 33 U.S.C. § 1319(d), MMMI is liable for a civil penalty not to exceed \$25,000 per day for each violation of the CWA occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

151. Unless required by an Order of the Court, MMMI will continue to violate 33 U.S.C. § 1311(a). Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), the United States is entitled to injunctive relief against MMMI for its continuing violations of the CWA.

FIFTH CLAIM FOR RELIEF
Failure to Prepare and Implement SPCC Plans

152. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 27 through 57, and 130 through 151 as if fully set forth herein.

153. Defendant stores oil and oil products at both the Ewing facility and the Paulina facility. The Ewing facility is located adjacent to the Calumet River. The Paulina facility is located adjacent to the South Branch of the Chicago River.

154. The Calumet River and the South Branch of the Chicago River are both "navigable waters of the United States" as defined in 40 C.F.R. §112.2.

155. On March 30, 1999 and March 31, 1999, U.S. EPA inspectors visited the Ewing facility and the Paulina facility, respectively. During those inspections, MMMI informed the U.S. EPA inspectors that SPCC Plans did not exist for either facility.

156. Pursuant to 40 C.F.R. §§ 112.1 and 112.3, owners and operators of onshore facilities which (i) were in operation on or before the effective date of 40 C.F.R. Part 112; (ii) possess an above-ground oil storage capacity in excess of the 1,320 gallons; and (iii) due to their location could discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare a SPCC Plan in accordance with 40 C.F.R. § 112.7 within six months after the effective date of 40 C.F.R. Part 112 and fully implement such plan within one year of the effective date.

157. The Ewing facility and the Paulina facility are both "onshore facilities" as defined in 40 C.F.R. § 112.2.

158. Both the Ewing facility and the Paulina facility were in operation prior to August 30, 1994, the effective date of the SPCC regulations.

159. As of March 31, 1999, both facilities possessed an above-ground oil storage capacity in excess of the 1,320 gallons.

160. Defendant's failure to prepare and implement SPCC Plans for the Ewing facility and the Paulina facility were violations of 40 C.F.R. § 112.3 and, in turn, constitute violations of 33 U.S.C. § 1321(j).

161. Each day that Defendant operated the Ewing facility or the Paulina facility without an SPCC Plan being prepared (after February 28, 1995) and implemented (after August 30, 1995)

constituted a separate violation of 40 C.F.R. Part 112 and, in turn, constitute violations of 33 U.S.C. § 1321(j).

162. Pursuant to Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), MMMI is liable for a civil penalty not to exceed \$25,000 per day for each violation of the OPA regulations occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

SIXTH CLAIM FOR RELIEF
Violations of Storm Water Permit Reporting Provisions.

163. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 27 through 57, and 130 through 162 as if fully set forth herein.

164. MMMI's Cometco facility, Paulina facility, and Ewing facility are governed by standardized storm water permits issued by Illinois EPA (Illinois permit numbers ILR0002812, ILR0002813, and ILR0002844, respectively). Pursuant to the terms of the storm water permits, MMMI must (1) establish a Storm Water Pollution Prevention Plan ("SWPPP"); (2) inspect the facilities annually for compliance with the SWPPP; and (3) submit inspection reports to the State of Illinois.

165. For the years 1995 through 1999, MMMI failed to submit the required annual inspection reports for any of the three facilities covered by the storm water discharge permits (Cometco, Paulina, Ewing).

166. Pursuant to CWA Section 301, 33 U.S.C. § 1311, each violation of a condition included in the storm water permits issued pursuant to CWA Section 402 is unlawful.

167. Each day that MMMI violated a condition of its storm water permits for the Cometco, Paulina, and Ewing facilities is a separate violation of the CWA.

168. Pursuant to CWA Section 309(d), 33 U.S.C. § 1319(d), MMMI is liable for a civil penalty not to exceed \$25,000 per day for each permit violation occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

169. Unless required by an Order of the Court, MMMI will continue to violate 33 U.S.C. § 1311. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), the United States is entitled to injunctive relief against MMMI for its continuing violations of the CWA.

SEVENTH CLAIM FOR RELIEF
Operation of a Used Oil Surface Impoundment

170. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11 and 58 through 111 as if fully set forth herein.

171. MMMI stores used oil in the Cometco facility settling pond. During at least the year 1998, MMMI used a contractor to remove the stored used oil from the pond, some of which was then transported to another MMMI facility for reuse.

172. Pursuant to Illinois Administrative Code Section 739.112(a), 35 Ill. Adm. Code § 739.112(a): "Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under 35 Ill. Adm. Code 724 or 725 [the State of Illinois regulations governing hazardous waste management units]."

173. The Cometco facility settling pond is a "surface impoundment" as defined in 35 Ill. Adm. Code § 720.110.

174. The Cometco facility is neither a hazardous waste permitted unit, nor one maintaining interim status.

175. MMMI/Cometco's storage of used oil in a surface impoundment violates 35 Ill. Adm. Code § 739.112(a).

176. Each day that MMMI/Cometco stored used oil in the settling pond is a separate violation of RCRA.

177. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cometco is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.112(a) occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

178. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.112(a). Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

EIGHTH CLAIM FOR RELIEF
Improper Used Oil Storage at the Cometco Facility

179. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 178 as if fully set forth herein.

180. MMMI/Cometco produces used oil through its operation and servicing of heavy machinery at the Cometco facility. MMMI/Cometco is a "used oil generator" as defined in 35 Ill. Adm. Code § 739.100.

181. Pursuant to 35 Ill. Adm. Code § 739.122, used oil generators must comply with certain regulations pertaining to the storage of used oil. Illinois Administrative Code Section

739.122(c), 35 Ill. Adm. Code § 739.122(c), specifies that “[c]ontainers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words ‘Used Oil.’”

182. On April 3, 2001, U.S. EPA inspectors identified fifteen drums of used oil being stored at the Cometco facility. Six of the fifteen drums were not labeled with the words “Used Oil.”

183. MMMI’s failure to properly label six drums of used oil is a violation of 35 Ill. Adm. Code § 739.122(c).

184. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cometco is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.122(c) occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

185. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.122(c). Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

NINTH CLAIM FOR RELIEF
Violation of Notification Requirements Applicable to Used Oil Processors

186. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 185 as if fully set forth herein.

187. The Cometco facility’s settling pond uses gravity to physically separate used oil from water. On at least three occasions in 1998, MMMI/Cometco retained a contractor who

skimmed off the used oil and transported it to another MMMI facility where it was later burned as used oil fuel.

188. MMMI/Cometco is a "used oil processor" as defined in 35 Ill. Adm. Code § 739.100.

189. Pursuant to Illinois Administrative Code Section 739.151, 35 Ill. Adm. Code § 739.151, used oil processors who have not previously complied with the notification requirements of RCRA Section 3010 must comply with those requirements and also obtain a U.S. EPA identification number and an Illinois special waste identification number.

190. For a period of time known best to the Defendant, but continuing at least through January 10, 2000, MMMI/Cometco did not comply with the RCRA Section 3010 notification requirements, and did not obtain either a U.S. EPA identification number or an Illinois special waste identification number.

191. MMMI/Cometco's failure to obtain a U.S. EPA identification number and a Illinois special waste identification number violated 35 Ill. Adm. Code § 739.151.

192. Each day that MMMI failed to obtain a U.S. EPA identification number and a Illinois special waste identification number is a separate violation of RCRA.

193. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cozzi is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.151 occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

194. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.151. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

TENTH CLAIM FOR RELIEF
Violation of Hazardous Waste Identification Regulation and
Failure to Develop and Apply Used-Oil Analysis Plan

195. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 194 as if fully set forth herein.

196. The Cometco facility's settling pond uses gravity to physically separate used oil from water. On at least three occasions in 1998, MMMI/Cometco retained a contractor who skimmed off the used oil and transported it to another MMMI facility where it was later burned as used oil fuel.

197. MMMI/Cometco is a "used oil processor" as defined in 35 Ill. Adm. Code § 739.100.

198. Pursuant to Illinois Administrative Code Section 739.155, 35 Ill. Adm. Code § 739.155: "Owners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of Section 739.153 and, if applicable, Section 739.172."

199. For a period of time known best to the Defendant, but continuing at least through January 10, 2000, MMMI/Cometco failed to develop and follow a written analysis plan regarding its used oil.

200. MMMI/Cometco's failure to develop and follow a written analysis plan regarding its used oil violated 35 Ill. Adm. Code § 739.155.

201. Each day that MMMI failed to develop and follow a written analysis plan regarding its used oil is a separate violation of RCRA.

202. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cometco is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.155 occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

203. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.155. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

ELEVENTH CLAIM FOR RELIEF
Improper Management of Used Oil

204. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 203 as if fully set forth herein.

205. The Cometco facility's settling pond uses gravity to physically separate used oil from water. On at least three occasions in 1998, MMMI/Cometco retained a contractor who skimmed off the used oil and transported it to another MMMI facility where it was later burned as used oil fuel.

206. MMMI/Cometco is a "used oil processor" as defined in 35 Ill. Adm. Code § 739.100.

207. For a period of time known best to the Defendant, and continuing through the present, MMMI/Cometco has stored used oil in the Cometco facility settling pond.

208. Pursuant to Illinois Administrative Code Section 739.154, 35 Ill. Adm. Code § 739.154, used oil processors may only store used oil in “tanks, containers, or units subject to regulation under 35 Ill. Adm. Code 724 or 725.”

209. MMMI/Cometco’s storage of used oil in the Cometco facility settling pond violates 35 Ill. Adm. Code § 739.154.

210. Each day that MMMI stored used oil in the Cometco settling pond is a separate violation of RCRA.

211. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cometco is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.154 occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

212. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.154. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

TWELFTH CLAIM FOR RELIEF
Improper Management of Used Oil Residues

213. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 212 as if fully set forth herein.

214. The Cometco facility’s settling pond uses gravity to physically separate used oil from water. On at least three occasions in 1998, MMMI/Cometco retained a contractor who

skimmed off the used oil and transported it to another MMMI facility where it was later burned as used oil fuel.

215. MMMI/Cometco is a "used oil processor" as defined in 35 Ill. Adm. Code § 739.100.

216. For a period of time known best to the Defendant, and continuing through the present, MMMI/Cometco has generated residues from the storage and processing of used oil in the Cometco facility settling pond. U.S. EPA inspectors visually identified oil-stained soils surrounding the perimeter of the Cometco facility settling pond, which constitute used oil storage/processing residues. MMMI/Cometco has not taken any action to manage/dispose of the oil-stained soils.

217. MMMI/Cometco's failure to manage the used oil storage/processing residues surrounding the Cometco facility settling pond violated 35 Ill. Adm. Code § 739.159.

218. Each day that MMMI failed to manage used oil residues surrounding the Cometco facility settling pond is a separate violation of RCRA.

219. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cometco is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.159 occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

220. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.159. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

THIRTEENTH CLAIM FOR RELIEF
Violation of Prohibition on Shipments of
Off-Specification Used Oil Fuels to Certain Burners

221. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 220 as if fully set forth herein.

222. For a period of time known best to the Defendant, but at least during the year 1998, MMMI/Cometco directed several shipments of used oil from the Cometco facility to the Paulina facility for burning as fuel. Upon information and belief, MMMI/Cometco never analyzed the oil in the manner prescribed in 35 Ill. Adm. Code § 730.172 to determine whether the used oil met the specifications set forth in 35 Ill. Adm. Code § 730.111.

223. MMMI/Cometco is a "used oil fuel marketer" as defined in Illinois Administrative Code Sections 739.110 and 739.170, 35 Ill. Adm. Code §§ 739.110, 739.170.

224. For a period of time known best to the Defendant and continuing to the present, MMMI/Cozzi burned used oil for energy recovery in space heaters at the Paulina facility. Upon information and belief, MMMI/Cometco never analyzed the oil to determine whether it met the specifications set forth in 35 Ill. Adm. Code § 730.111.

225. MMMI/Cozzi is a "used oil burner" as defined in Illinois Administrative Code Sections 739.110 and 739.160, 35 Ill. Adm. Code §§ 739.110, 739.160.

226. On a number of occasions known best to the Defendant, but consisting of at least three shipments during 1998, MMMI/Cometco shipped off-specification used oil to the Paulina facility for burning.

227. Upon information and belief, MMMI/Cozzi never possessed either a U.S. EPA identification number or a Illinois special waste identification number.

228. MMMI/Cometco's shipments of used oil to a used oil burner which lacked a U.S. EPA identification number and a Illinois special waste identification number violated 35 Ill. Adm. Code § 739.171.

229. Each shipment that MMMI made to a used oil burner lacking the requisite identification numbers is a separate violation of RCRA.

230. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cometco is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.171 occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

231. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.171. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

FOURTEENTH CLAIM FOR RELIEF
Failure to Obtain Certifications Relating
to Shipments of Off-Specification Used Oil Fuels

232. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 231 as if fully set forth herein.

233. For a period of time known best to the Defendant, but for at least during the year 1998, MMMI/Cometco directed several shipments of used oil from the Cometco facility to the Paulina facility for burning as fuel. Upon information and belief, MMMI/Cometco never analyzed the oil in the manner prescribed in 35 Ill. Adm. Code § 730.172 to determine whether the used oil met the specifications set forth in 35 Ill. Adm. Code § 730.111.

234. MMMI/Cometco is a "used oil fuel marketer" as defined in Illinois Administrative Code Sections 739.110 and 739.170, 35 Ill. Adm. Code §§ 739.110, 739.170.

235. For a period of time known best to the Defendant and continuing to the present, MMMI/Cozzi burned used oil for energy recovery in space heaters at the Paulina facility. Upon information and belief, MMMI/Cometco never analyzed the oil to determine whether it met the specifications set forth in 35 Ill. Adm. Code § 730.111.

236. MMMI/Cozzi is a "used oil burner" as defined in Illinois Administrative Code Sections 739.110 and 739.160, 35 Ill. Adm. Code §§ 739.110, 739.160.

237. On a number of occasions known best to the Defendant, but consisting of at least three shipments during 1998, MMMI/Cometco shipped off-specification used oil to the Paulina facility for burning.

238. Upon information and belief, prior to directing its first shipment of off-specification used oil fuel to MMMI/Cozzi, MMMI/Cometco failed to obtain a written and signed notice from MMMI/Cozzi certifying that it had notified U.S. EPA of the location and general description of its used oil management activities and would only burn the off-specification used oil only in an industrial furnace or boiler identified in Illinois Administrative Code Section 739.161(a).

239. MMMI/Cometco's shipments of used oil to a used oil burner without first obtaining a Section 739.175 certification violated 35 Ill. Adm. Code § 739.175.

240. Each shipment that MMMI made to a used oil burner without first obtaining a Section 739.175 certification is a separate violation of RCRA.

241. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cometco is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.175 occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

242. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.175. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

FIFTEENTH CLAIM FOR RELIEF
Violations of Used Oil Storage Regulations at Paulina

243. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 242 as if fully set forth herein.

244. MMMI/Cozzi produces used oil through its operation of shredders and other machinery at the Paulina facility. MMMI/Cozzi constitutes a “used oil generator” as defined in 35 Ill. Adm. Code § 739.100.

245. Pursuant to 35 Ill. Adm. Code § 739.122, used oil generators must comply with certain regulations pertaining to the storage of used oil. Illinois Administrative Code Section 739.122(c), 35 Ill. Adm. Code § 739.122(c), specifies that “[c]ontainers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words ‘Used Oil.’”

246. On or about August 4, 1998, U.S. EPA inspectors identified at least 26 drums of used oil being stored at the Paulina facility. None of the 26 drums were labeled with the words “Used Oil.”

247. MMMI's failure to properly label 26 drums of used oil is a violation of 35 Ill. Adm. Code § 739.122(c).

248. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cozzi is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.122(c) occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

249. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.122(c). Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

SIXTEENTH CLAIM FOR RELIEF
Violations of Used Oil Storage Regulations at Paulina

250. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 249 as if fully set forth herein.

251. MMMI/Cozzi produces used oil through its operation of shredders and other machinery at the Paulina facility. MMMI/Cozzi constitutes a "used oil generator" as defined in 35 Ill. Adm. Code § 739.100.

252. Pursuant to 35 Ill. Adm. Code § 739.122, used oil generators must comply with certain regulations pertaining to the storage of used oil. Illinois Administrative Code Section 739.122(d), 35 Ill. Adm. Code § 739.122(d), specifies that "[u]pon detection of a release of used oil to the environment . . . a generator shall perform the following cleanup steps: (1) Stop the release; (2) Contain the released used oil; (3) Properly clean up and manage the released used oil

and other materials; and (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.”

253. On August 4, 1998, U.S. EPA inspectors visually identified several areas of releases of used oil at the Paulina facility, specifically in the immediate vicinity of the above-ground storage tanks located in Yard 1 and Yard 10. At that time, the U.S. EPA inspectors informed Cozzi personnel of the used oil releases. On October 5, 1998, the U.S. EPA inspectors again inspected the Paulina facility and noted that the used-oil releases had not been cleaned up.

254. MMMI’s failure to properly clean up the released used oil violated 35 Ill. Adm. Code § 739.122(d).

255. Each day that MMMI failed to properly clean up the released used oil is a separate violation of RCRA.

256. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cozzi is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.122(d) occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

257. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.122(d). Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

SEVENTEENTH CLAIM FOR RELIEF
Improper Burning of Used Oil

258. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 257 as if fully set forth herein.

259. For a period of time known best to the Defendant and continuing to the present, MMMI/Cozzi burned used oil for energy recovery in space heaters at the Paulina facility. Upon information and belief, MMMI/Cometco never analyzed the used oil to determine whether it met the specifications set forth in 35 Ill. Adm. Code § 730.111.

260. MMMI/Cozzi is a "used oil burner" as defined in Illinois Administrative Code Sections 739.110 and 739.160, 35 Ill. Adm. Code §§ 739.110, 739.160.

261. Upon information and belief, a portion of the used oil burned in the Paulina facility space heaters had been generated off-site at the Cometco and/or Ewing facilities.

262. Burning off-specification used oil fuel in space-heaters for energy recovery, when such used oil fuel has been generated off-site, violates 35 Ill. Adm. Code § 739.161.

263. Each day that MMMI burned off-specification used oil fuel -- generated off-site-- in space-heaters for energy recovery is a separate violation of RCRA.

264. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cozzi is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.161 occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

265. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.161. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

EIGHTEENTH CLAIM FOR RELIEF
Improper Used Oil Storage at Ewing

266. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 265 as if fully set forth herein.

267. MMMI/Scrap Processing produces used oil through its operation of shredders and other machinery at the Ewing facility. MMMI/Scrap Processing constitutes a "used oil generator" as defined in 35 Ill. Adm. Code § 739.100.

268. Pursuant to 35 Ill. Adm. Code § 739.122, used oil generators must comply with certain regulations pertaining to the storage of used oil. Illinois Administrative Code Section 739.122(c), 35 Ill. Adm. Code § 739.122(c), specifies that "[c]ontainers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words 'Used Oil.'"

269. On or about August 4, 1998, U.S. EPA inspectors identified at least thirteen drums of used oil being stored at the Ewing facility. None of the thirteen drums were labeled with the words "Used Oil."

270. MMMI's failure to properly label thirteen drums of used oil is a violation of 35 Ill. Adm. Code § 739.122(c).

271. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Scrap Processing is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 739.122(c) occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

272. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 739.122(c). Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

NINETEENTH CLAIM FOR RELIEF
Violation of Hazardous Waste Accumulation Regulations

273. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 273 as if fully set forth herein.

274. For a period of time best known by Defendants, and continuing through October 1998, MMMI/Cozzi operated a "used oil tank" at the Paulina facility. On August 17, 1998, U.S. EPA inspectors sampled the "used oil" material in that tank. The U.S. EPA's analysis of the material indicated the presence of 54,000 ppm tetrachloroethene (>1,000 ppm total halogens) and 63 ppm benzene.

275. Pursuant to Illinois Administrative Code Section 739.110(b), 35 Ill. Adm. Code § 739.110(b), used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste. Generators of hazardous waste are subject to the regulations codified at 35 Ill. Adm. Code Part 722.

276. On June 2, 1989, MMMI's predecessor, Cozzi, notified U.S. EPA of its status as a conditionally exempt small quantity generator of between 100 kilograms and 1,000 kilograms of hazardous waste per month.

277. MMMI/Cozzi's "used oil tank" at the Paulina facility was not labeled with the words "hazardous waste" nor was there an accumulation date recorded for the material in the tank.

278. MMMI/Cozzi's failure to label the tank with the words "hazardous waste" and its failure to record an accumulation date for the material in the tank violated 35 Ill. Adm. Code § 722.134(d).

279. Each day that MMMI accumulated hazardous waste in an improperly labeled tank or failed to record an accumulation date for the hazardous material in the tank is a separate violation of RCRA.

280. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cozzi is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 722.134(d) occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

281. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 722.134(d). Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

TWENTIETH CLAIM FOR RELIEF
Violation of Hazardous Waste Accumulation Regulations

282. The United States hereby realleges the allegations set forth above in paragraphs 1 through 11, 58 through 111, and 170 through 281 as if fully set forth herein.

283. For a period of time best known by Defendants, and continuing through October 1998, MMMI/Cozzi operated a "used oil tank" at the Paulina facility. On August 17, 1998, U.S. EPA inspectors sampled the "used oil" material in that tank. The U.S. EPA's analysis of the material indicated the presence of 54,000 ppm tetrachloroethene (>1,000 ppm total halogens) and 63 ppm benzene.

284. Pursuant to Illinois Administrative Code Section 739.110(b), 35 Ill. Adm. Code § 739.110(b), used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste. Generators of hazardous waste are subject to the regulations codified at 35 Ill. Adm. Code Part 722.

285. On June 2, 1989, MMMI's predecessor, Cozzi, notified U.S. EPA of its status as a conditionally exempt small quantity generator of between 100 kilograms and 1,000 kilograms of hazardous waste per month.

286. In October 1998, MMMI/Cozzi disposed of the tank and its contents. Upon information and belief, in disposing of the tank and its contents, MMMI/Cozzi did not comply with the hazardous waste disposal requirements set forth at 35 Ill. Adm. Code § 721.105(g)(3).

287. MMMI/Cozzi's failure to dispose of its hazardous waste in the manner set forth in 35 Ill. Adm. Code § 721.105(g)(3) violated 35 Ill. Adm. Code § 721.105(g)(3).

288. Pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), MMMI/Cozzi is liable for a civil penalty not to exceed \$25,000 per day for each violation of 35 Ill. Adm. Code § 721.105 occurring before January 30, 1997, and up to \$27,500 per day for each violation occurring on or after January 30, 1997 (Pub. L. 104-134 and 40 C.F.R. § 19.4).

289. Unless required by an Order of the Court, MMMI will continue to violate 35 Ill. Adm. Code § 721.105. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the United States is entitled to injunctive relief against MMMI for its continuing violations of RCRA.

RELIEF REQUESTED

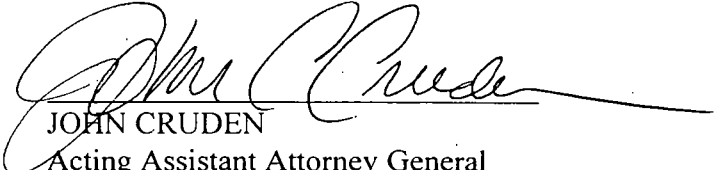
WHEREFORE, the United States respectfully requests that this Court:

1. Order MMMI to comply with the Clean Air Act and its implementing regulations;
2. Order MMMI to comply with all terms and conditions of its NPDES Storm water Permits, as well as applicable provisions of the Clean Water Act and its implementing regulations;
3. Order MMMI to comply with the Resource Conservation and Recovery Act and its implementing state and federal regulations;
4. Assess civil penalties against MMMI of up to \$25,000 per day, per violation, for each and every violation of the CAA, CWA, and RCRA, and the applicable regulations promulgated thereunder, prior to January 31, 1997, and up to \$27,500 per day for each violation occurring on or after January 31, 1997, as provided in Pub. L. 104-134 and 40 C.F.R. § 19.4.
5. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,


By:

Date: 6-13-01


JOHN CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

By:

Date: 6/14/01


JEFFREY A. SPECTOR
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-4432

KURT LINDLAND
Assistant United States Attorney
Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604

Of Counsel:

SHERRY L. ESTES
Associate Regional Counsel
U.S. EPA - ORC (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604